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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

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| In the Matter of |) | |
| |) | |
| Rulemaking to Amend Part 1 and Part 21 |) | CC Docket No. 92-297 |
| of the Commission's Rules to Redesignate |) | |
| the 27.5 - 29.5 GHz Frequency Band and |) | RM- 7872; RM-7722 |
| to Establish Rules and Policies for |) | |
| Local Multipoint Distribution Service |) | |

RESPONSE TO THE FCC'S PUBLIC NOTICE ON ESTABLISHMENT OF A
NEGOTIATED RULEMAKING ADVISORY COMMITTEE

The Association of America's Public Television Stations, Public Broadcasting Service, Organization of State Broadcasting Executives, American Council on Education, Commission on Information Technologies of the National Association of State Universities and Land Grant Colleges,¹ Instructional Telecommunications Consortium of the American Association of Community Colleges, Arizona Board of Regents for Benefit of the University of Arizona, Alliance for Higher Education, Iowa Public Broadcasting Board, University of Maine at Augusta, University of Wisconsin System, Washington State University, South Carolina Educational Television Commission, and Ana G. Mendez Educational Foundation (herein referred to as the "Public Broadcasting/Educational Parties") submit their comments in response to the FCC's Public Notice, released February 11, 1994, in the above-captioned proceeding.

The FCC's Public Notice requests input on the FCC's proposal to establish an Advisory Committee to negotiate proposed regulations defining the technical rules appropriate to sharing the 27.5 - 29.5 GHz ("28 GHz") band

¹ Formerly the Board on Distance Education and Telecommunications of the National Association of State Universities and Land Grant Colleges.

by the proposed terrestrial Local Multipoint Distribution Service ("LMDS") and by the satellite services. The Public Broadcasting/Educational Parties support the establishment of a negotiated rulemaking Advisory Committee and underscore the importance of the FCC's decision to include as an affected interest on the Advisory Committee a representative of the public television and educational parties who commented in the LMDS proceeding.²

The Public Broadcasting/Educational Parties filed comments emphasizing the importance of reserving a portion of the proposed LMDS spectrum for use as a cost effective, "last mile" delivery mechanism for the interactive video and data network of services made available through public broadcasting stations, schools, libraries, and other learning centers. Additionally, two of the petitioners in this proceeding, University of Texas--Pan American and Suite 12 Group, support a reservation for public broadcasting and educational use. While the central issue in the negotiated rulemaking will be to develop technical rules that will permit terrestrial and satellite services to share the band,³ any technical solution will necessarily impact on the policy issue of reserving capacity for educational uses. Therefore, it is essential that the interests of the public broadcasting and educational groups be represented satisfactorily in a negotiated rulemaking process.

In response to the questions set forth in the FCC's Public Notice regarding the negotiated rulemaking process, the Public Broadcasting/Educational Parties offer the following comments. These parties support establishment of an Advisory Committee and agree that the negotiated rulemaking process appears appropriate for this proceeding. The Public Broadcasting/Educational Parties believe that the establishment of LMDS, with a reservation for noncommercial educational uses, will serve the public interest. To the extent there are any technical problems with terrestrial

² Public Notice, ¶ 8.

³ The FCC's Public Notice and Second Notice of Proposed Rulemaking ("Second Notice"), released February 11, 1994, in this proceeding, make clear that the Advisory Committee will deal with only the technical issue of "What technical rules should be adopted for the Local Multipoint Distribution Service and/or the fixed satellite service so as to maximize the sharing of the spectrum among these services?" (Public Notice, ¶ 6; Second Notice, ¶ 46).

and satellite interests sharing the spectrum, it appears that the negotiated rulemaking process may be the best way to resolve those issues and facilitate authorization of the service.

Given the specific technical issue delegated by the Commission to the Advisory Committee, it is not expected that policy issues, such as the reservation of capacity, would be specifically addressed in the negotiated rulemaking process. However, since the technical decisions likely will impact on such policy issues, the Commission should insure that the Advisory Committee process is structured in a manner such that potential public service uses are given appropriate consideration.

In response to the FCC's inquiry as to whether it is predicted that a consensus can be reached in the negotiated rulemaking process, the Public Broadcasting/Educational Parties can only respond hopefully. It appears that sharing is technically feasible and would result in adequate spectrum sufficient to satisfy the needs of the parties involved in this proceeding. However, this will require the parties to agree to investing in technical measures that will make sharing possible. Therefore, the actual outcome of the negotiated rulemaking process depends in large part upon the willingness of interested parties to cooperate in adopting technical means that result in satisfactory use of the spectrum.

The Public Broadcasting/Educational Parties expect to be able to meet the commitment that will be required for participation in the negotiation process. The parties will designate a qualified person representing public broadcasting and educational interests to serve on the Advisory Committee. This person would be able to participate without reimbursement from the FCC if the Advisory Committee meetings were held in the Washington, D.C. area, as the FCC's Public Notice states. Given the number of organizations that the Public Broadcasting/Educational delegate would represent, the delegate could not have on-the-spot decision making authority. However, it is anticipated that there will be sufficient opportunity, over the two-to-four month negotiation period, for sufficient collaboration and consultation to enable the delegate to speak for this group. Finally, the Public

Broadcasting/Educational Parties would not be able to pay a pro-rated share of reimbursement for a facilitator.

Conclusion

The Public Broadcasting/Educational Parties support establishment of an Advisory Committee and commit the participation of a delegate who will be authorized to represent public broadcasting and educational interests on that Advisory Committee. These parties are willing to work toward expedient resolution of the technical issues involved in sharing of the LMDS spectrum in expectation that a portion of that spectrum will be reserved for public broadcasting and educational use.

Respectfully submitted,

ASSOCIATION OF AMERICA'S PUBLIC
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